

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN DALE MAHLUM**, on February 25, 2003 at 8:04 A.M., in Room 422 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Sherm Anderson (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Kelly Gebhardt (R)  
Sen. Ken (Kim) Hansen (D)  
Sen. Bob Keenan (R)  
Sen. Sam Kitzenberg (R)  
Sen. Glenn Roush (D)  
Sen. Don Ryan (D)  
Sen. Carolyn Squires (D)

**Members Excused:** Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Sherrie Handel, Committee Secretary  
Eddye McClure, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SJR 27, 2/22/2003; SB 457,  
2/21/2003; SB 430, 2/17/2003; SB  
391, 2/13/2003; SB 450, 2/20/2003;  
SB 458, 2/22/2003  
Executive Action: SB 415; SB 402; SB 349; SB 341; SJR  
27; SB 444; SB 457; SB 450; SB 391;  
SB 430, SB 458

**{Tape: 1; Side: A}**

EXECUTIVE ACTION ON SB 415

*{Tape: 1; Side: A; Approx. Time Counter: 1.2 - 5.3}*

Motion: SENATOR VICKI COCCHIARELLA moved that SB 415 DO PASS.

Motion: SEN. COCCHIARELLA moved that SB 041501.AEM DO PASS  
**EXHIBIT**(bus42a01) .

Discussion:

Eddy McClure, explained the amendments.

SENATOR DON RYAN stated his opposition to the amendments, noting he preferred the bill as originally written.

Vote: Motion carried 6-4 with ANDERSON, HANSEN, KITZENBERG, and RYAN voting no.

Motion/Vote: SENATOR MIKE SPRAGUE moved that SB 415 DO PASS AS AMENDED. Motion carried 10-0.

EXECUTIVE ACTION ON SB 402

*{Tape: 1; Side: A; Approx. Time Counter: 5.6 - 7.9}*

Motion: SEN. SPRAGUE moved that SB 402 DO PASS.

Motion: SEN. COCCHIARELLA moved that SB 040201.AEM DO PASS.

Discussion:

SEN. COCCHIARELLA explained the amendments.

Vote: Motion carried 10-0.

Motion/Vote: SEN. SPRAGUE moved that SB 402 DO PASS AS AMENDED,  
**EXHIBIT**(bus42a02) (SB040201.aem) . Motion carried 10-0.

EXECUTIVE ACTION ON SB 349

*{Tape: 1; Side: A; Approx. Time Counter: 8 - 19.4}*

Motion/Vote: SEN. SPRAGUE moved that SB 349 DO PASS. Motion carried 9-1 with RYAN voting no.

EXECUTIVE ACTION ON SB 341

{Tape: 1; Side: A; Approx. Time Counter: 20 - 27.6}

{Tape: 1; Side: B; Approx. Time Counter: 4.7 - 17.4}

Motion: SEN. COCCHIARELLA moved that SB 341 DO PASS.

Discussion:

Motion: SEN. COCCHIARELLA moved SB 040201.AEM **EXHIBIT**(bus42a03) .

SEN. COCCHIARELLA explained the amendments are a compromise between the parties.

Vote: Motion carried 11-0.

SEN. RYAN distributed a proposed amendment from Greg Van Horssen, State Farm Insurance, **EXHIBIT**(bus42a04) .

Motion/Vote: SEN. RYAN moved that SB 341 DO PASS AS AMENDED.  
Motion carried 11-0.

HEARING ON SJR 27

{Tape: 1; Side: B; Approx. Time Counter: 18.2 - 20}

Sponsor: SENATOR ROYAL JOHNSON

Proponents: Arnie Olsen, Director, Montana Historical Society  
Jamie Doggett, County Commissioner, Meagher County  
Mike Sprague, Senator, SD 6

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 18.2 - 23.5}

SENATOR ROYAL JOHNSON, SD 5, Billings, brought forward a resolution urging the Board of Directors of the Charles M. Bair Family Trust to keep the Charles M. Bair Family Museum open and

operational at its current location in the Bair family home in Martinsdale in Meagher County. He explained Alberta Bair established a trust for lands owned by her family and created a museum.

**Proponents' Testimony:**

***{Tape: 1; Side: B; Approx. Time Counter: 23.7 - 29}***

**Arnie Olsen, Director, Montana Historical Society**, conveyed his support for the resolution. **Mr. Olsen** spoke about Charles Bair's life, and stated it was the wish of the Bair family that the home would always be a museum open to the public.

**Jamie Doggett, County Commissioner, Meagher County**, conveyed the support of her agency for **SJR 27**. **Ms. Doggett** stated numerous meetings have been held in surrounding communities, and support for the resolution is strong.

**SENATOR MIKE SPRAGUE, SD 6**, expressed his support for the resolution.

**Questions from Committee Members and Responses:**

No questions were posed by Committee members on this resolution.

**Closing by Sponsor:**

***{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 2}***

**SEN. JOHNSON** expressed his appreciation to the Committee.

**EXECUTIVE ACTION ON SJR 27**

***{Tape: 2; Side: A; Approx. Time Counter: 2.6 - 3}***

**Motion/Vote:** **SEN. SPRAGUE** moved that SJR 27 DO PASS. Motion carried 9-0.

**HEARING ON SB 444**

**Sponsor:** **SENATOR JON TESTER**

**Proponents:** **Cory Swanson, Coventry First**  
**Jill Gerdrum, State Auditor's Office**

**Don Allen, Montana Association of Insurance  
& and Financial Advisors**  
**Pat Callbeck-Harper, AARP**  
**Rick Bartos, State Manager, Adult Protective  
Services, Department of Public Health & Human  
Services (DPHHS)**  
**Jacqueline Lenmark, American Insurance  
Association and American Council of Life  
Insurers**  
**Greg Van Horssen, State Farm Insurance**

**Opponents:** NONE

**Informational Witnesses:** NONE

**Opening Statement by Sponsor:**

***{Tape: 2; Side: A; Approx. Time Counter: 3.6 - 6.0}***

**SENATOR JON TESTER, SD 45, Big Sandy,** brought forward a bill generally revising securities laws, insurance laws, and elder and persons with developmental disabilities laws to provide for the protection of consumers and senior citizens and persons with developmental disabilities with respect to the marketing of securities and insurance products. He explained senior citizens are increasingly targeted as victims of fraud. This bill enhances protective mechanisms and elevates elder abuse to felony status. **SEN. TESTER** outlined the remainder of the bill.

**Proponents' Testimony:**

***{Tape: 2; Side: A; Approx. Time Counter: 6.2 - 22.7}***

**Cory Swanson, Coventry First,** expressed his organization's support for the bill. He noted **Coventry First** is the only life-settlement provider in Montana, and explained how his company assists individuals who choose to modify the terms of their life insurance policies. **Mr. Swanson** briefly explained the sections of the bill, noting how each protects individual policy holders.

**Jill Gerdrum, State Auditor's Office,** submitted written testimony, **EXHIBIT (bus42a05)**.

**Don Allen, Montana Association of Insurance and Financial  
Advisors,** conveyed his organization's support for the bill.

**Pat Callbeck-Harper, AARP,** presented written testimony,

**EXHIBIT (bus42a06)**, and a Consumer Fraud Survey conducted by her organization, **EXHIBIT (bus42a07)**.

**Rick Bartos, State Manager, Adult Protective Services, DPHHS**, conveyed his agency's support for the bill. He stated **Adult Protective Services** deals with issues of exploitation on a daily basis, and county prosecutors indicate conviction is very difficult. This bill clarifies and strengthens present law and increases penalties.

**Jacqueline Lenmark, American Insurance Association and American Council of Life Insurers**, offered the support of both organizations for the bill.

**Greg Van Horssen, State Farm Insurance**, expressed support for the bill and appreciation to **SEN. TESTER** for bringing it forward.

**Questions from Committee Members and Responses:**

*{Tape: 2; Side: A; Approx. Time Counter: 23.4 - 24.5}*

**SENATOR CAROLYN SQUIRES** asked **Mr. Bartos** whether the penalty aspect of the legislation extends to family members who abscond with money. **Mr. Bartos** replied in the affirmative.

**Closing by Sponsor:**

*{Tape: 2; Side: A; Approx. Time Counter: 24.7 - 24.9}*

**SEN. TESTER** expressed appreciation to the Committee.

**EXECUTIVE ACTION ON SB 444**

*{Tape: 2; Side: A; Approx. Time Counter: 25 - 25.5}*

**Motion/Vote:** **SENATOR SHERM ANDERSON** moved that SB 444 DO PASS.  
Motion carried 9-0.

**HEARING ON SB 457**

**Sponsor:** **SENATOR MIKE COONEY**

**Proponents:** **NONE**

**Opponents:** **Bea Lunda, Executive Secretary, Liquor Store**

**Owners of Montana, and Owner, State Store #33**  
**Jackie Thomas, Owner, State Store #170**  
**Shane Farnsworth, State Store #3**  
**Doug Kirby, State Store #196**  
**Steve Bucher, State Store #45**  
**Virginia Zwerneman, State Store #34**  
**Bill Hanna, State Store #65**

**Informational Witnesses:** Shauna Bingham, Department of Revenue

**Opening Statement by Sponsor:**

***{Tape: 2; Side: B; Approx. Time Counter: 3.5 - 8.5}***

**SENATOR MIKE COONEY, SD 26, Helena,** brought forward a bill reducing from 60 days to 30 days the time in which an agency liquor store must pay for liquor purchased from the state liquor warehouse. He stated, while fairly simple, the bill has some major consequences. He explained the state purchases liquor on net-thirty terms; individuals who purchase from the state warehouse have sixty (60) days to pay for their purchase. An audit report has shown \$672,000 per biennium would be saved if individuals purchasing from the state had to pay within thirty days. **SEN. COONEY** provided the Committee with a copy of page 15 of the auditor's report **EXHIBIT (bus42a08)**.

**Opponents' Testimony:**

***{Tape: 2; Side: B; Approx. Time Counter: 9.3 - 22.5}***

**Bea Lunda, Executive Secretary, Liquor Store Owners of Montana, and Owner, State Store #33,** provided the Committee with a brief history of liquor sales in Montana and how the state became responsible for liquor. She also expressed her opposition.

**Jackie Thomas, Owner, State Store #170,** told a story about a piece of lumber intended for a house. She stated the bill will have too negative an impact on her business. She requested the Committee not support the bill.

**Shane Farnsworth, Owner, State Store #3,** stated he owns the largest volume store in the state. If the bill passes, he will no longer be able to maintain his current selection or level of service. He respectfully requested the Committee oppose the bill.

**Doug Kirby, Owner, State Store #196,** stated when he acquired the store he believed in his agreement with the state. If this bill

passes he will not be able to keep the store open.

**Steve Bucher, Owner, State Store #45**, stated he purchased his story one year ago. This legislation would force him to pull out of that business. He asked the Committee to vote no on the bill.

**Virginia Zwerneman, Owner, State Store #34**, stated she agreed with the previous testimony in opposition. If the bill passes, she too would be faced with extreme difficulty.

**Bill Hanna, Owner, State Store #65**, stated cutting the payment schedule from sixty (60) days to thirty (30) days will probably result in twenty-five (25%) of stores closing.

**Informational Witness Testimony:**

*{Tape: 2; Side: B; Approx. Time Counter: 22.6 - 22.7}*

**Shauna Bingham, Department of Revenue**, stated she was present to answer any questions Committee members may have.

**Questions from Committee Members and Responses:**

*{Tape: 2; Side: B; Approx. Time Counter: 23 - 29}*

*{Tape: 3; Side: A; Approx. Time Counter: 0.4 - 15.6}*

**SENATOR MIKE SPRAGUE** asked **Mr. Farnsworth** about the turn-over rate for products. **Mr. Farnsworth** replied it normally depends on the product and the season. For his store, inventory turns-over approximately seven times per year.

**SENATOR KELLY GEBHARDT**, referring to **Mr. Kirby's** testimony regarding payments, asked if it would be acceptable to reduce the time from sixty days to thirty days at a rate of ten days per year; i.e., this year fifty days, next year forty days. **Mr. Kirby** responded the incremental decrease would be easier. However, due to the nature of demand, he keeps a lot of inventory that he would no longer be able to stock because he could not afford having to pay while waiting for a customer to order. **SEN. GEBHARDT** asked by how much would sales decline if **Mr. Kirby** found it necessary to reduce inventory by one-third. **Mr. Kirby** replied possibly ten percent (10%), and his customers would be upset by delays.

**SENATOR DON RYAN** inquired whether **SEN. COONEY** had requested a fiscal note. **SEN. COONEY** replied in the negative, noting the bill was scheduled sooner than he had anticipated. He stated the impact would be positive on the general fund budget, however, the



exact figure is not certain. **SEN. RYAN** asked whether the state is losing interest that would otherwise accumulate, or is there another expense to the state. **SEN. COONEY** replied his conversations with the State Auditor suggest **SEN. RYAN's** understanding is correct.

**SEN. SPRAGUE** stated he was present when the original negotiations for the state liquor program came about. He stated he believes there will be a one time increase to the general fund because once a thirty day schedule was in place, the cash flow would be the same. He asked **Ms. Lunda** if he might be missing something in the equation. **Ms. Lunda** replied **SEN. SPRAGUE** was correct. She does not believe this legislation will generate a single additional dollar for the state general fund.

**SENATOR CAROLYN SQUIRES** asked **SEN. SPRAGUE** if the auditor was addressing the correct issue. **SEN. SPRAGUE** indicated, though he was not involved in the audit, his interpretation is it would be a one time increase in revenue.

**SEN. SQUIRES** asked whether the auditor had taken into consideration what was promised in 1995. **SEN. COONEY** stated he had a conversation with **Ms. Lunda** when this legislation was first proposed, and which resulted in a subsequent visit to the auditor's office. It is his understanding the sixty day payment agreement was transitional in nature. He does not believe there is any formal agreement which stipulates the terms.

**SENATOR VICKI COCCHIARELLA** asked **Ms. Bingham** what her office has done toward renegotiation of the bailment agreements. **Ms. Bingham** replied the term the auditor used--bailment agreement--is tied to the administrative rules. There are no bailment agreements, the office goes by the administrative rules. **SEN. COCCHIARELLA** inquired whether any steps have been taken to address the agency's side of the audit report. **Ms. Bingham** replied in the negative.

**SEN. SPRAGUE** explained the uniqueness of Montana's liquor program. He asked whether the state had sufficient buying power to negotiate a sixty day net agreement with suppliers. **Ms. Bingham** replied there are nineteen states with controlled liquor programs. With regard to whether vendors would be willing to accept a sixty day payment term, she has not posed that question to them. **SEN. SPRAGUE** asked if all nineteen control states have net-thirty terms. **Ms. Bingham** replied in the affirmative.

**SEN. GEBHARDT**, referring to **SEN. COONEY's** hand-out (see, EXHIBIT 8), stated the numbers are not correct. He asked whether **SEN.**

COONEY had looked into that problem. SEN. COONEY replied in the negative.

SEN. GEBHARDT requested the total dollar amount for sales from the state warehouse. Ms. Lunda, in response, provided EXHIBIT (bus42a09) .

CHAIRMAN DALE MAHLUM asked if factory representatives ever approach Ms. Lunda with information on new products, and so forth. Ms. Lunda replied in the affirmative. CHAIRMAN MAHLUM asked whether representatives ever indicate when new products will be available. Ms. Lunda replied in the affirmative. CHAIRMAN MAHLUM asked whether passage of the legislation would result in Ms. Lunda's reducing her inventory. Ms. Lunda replied yes.

Closing by Sponsor:

*{Tape: 3; Side: A; Approx. Time Counter: 15.7 - 17}*

SEN. COONEY expressed appreciation to the Committee for a good hearing. He believes this is a policy decision.

EXECUTIVE ACTION ON SB 457

*{Tape: 3; Side: A; Approx. Time Counter: 17.6 - 19}*

Motion/Vote: SEN. SPRAGUE moved that SB 457 BE INDEFINITELY POSTPONED. Motion carried 8-1; with SQUIRES voting NO.

HEARING ON SB 430

Sponsor: SENATOR JOHN ELLINGSON

Proponents: Klaus Sitte, Attorney, Montana Legal Services Association (MLSA)  
Kathy Doughty, Licensed Property Manager, Montana Nurses Association, and Member, Montana Landlords Association  
Matt Leow, Montana Public Interest Research Group (MPIRG)  
Chris Christians, Montana Landlords Association

Opponents: Roger Halver, Montana Association of Realtors  
Collin Bangs, Foss Management Service

**Merilynn J. Foss, Realtor/Property Manager,  
Foss Management Service, in absentia**

**Informational Witnesses: Brian McCullough, President, Helena  
Landlords Association**

**Opening Statement by Sponsor:**

***{Tape: 3; Side: A; Approx. Time Counter: 20 - 21.2}***

**SEN. JOHN ELLINGSON, SD 33, Missoula,** brought forward a bill which generally revises the Montana Residential Landlord and Tenant Act of 1977, and the laws relating to residential tenant's security deposits. He stated this law needs evaluation each session in order to address changing issues and concerns.

**Proponents' Testimony:**

***{Tape: 3; Side: A; Approx. Time Counter: 21.4 - 28.8}***

***{Tape: 3; Side: B; Approx. Time Counter: 4.1 - 6.3}***

**Klaus Sitte, Attorney, MLSA,** stated he was a co-author of the original 1977 Act. He explained there are nearly eighty changes to present statutes; most are terminology related, five are significant. **Mr. Sitte** briefly explained the more significant changes to statute. He urged the Committee's support of the bill.

**Kathy Doughty, Licensed Property Manager, Montana Nurses Association, and Member, Montana Landlords Association,** conveyed her support for the bill.

**Matt Leow, MPIRG,** conveyed support for the bill. He explained his organization runs a tenant/landlord hotline. They have taken calls from both tenants and landlords regarding problems with current law. He requested the Committee recommend Do Pass.

**Chris Christians, Montana Landlords Association,** conveyed his organization's support of the bill as amended. He emphasized, should the amendments not be adopted his organization will oppose the bill.

**Opponents' Testimony:**

***{Tape: 3; Side: B; Approx. Time Counter: 6.4 - 10.2}***

**Roger Halver, Montana Association of Realtors,** stated his organization is comprised of over 3,000 members who do real

estate sales and property management. In speaking with a number of members, he discovered they were opposed to the bill because they believe the changes make the 1977 Act more confusing.

**Collin Bangs, Foss Management Service**, conveyed opposition to the bill partially arose from sections of the bill now stricken. While not certain, he believes the changes may remedy the bill. **Mr. Bangs** also submitted written testimony on behalf of **Merilynn J. Foss EXHIBIT (bus42a10)**.

**Merilynn J. Foss, Foss Managment Service, in absentia**, submitted written testimony.

**Informational Witness Testimony:**

*{Tape: 3; Side: B; Approx. Time Counter: 10.3 - 11}*

**Brian McCullough, President, Helena Landlords Association**, stated the first time his organization had information relevant to the bill was in December of 2002. His organization was not involved in formulation of the bill. He also stated additional concerns may arise.

**Questions from Committee Members and Responses:**

No questions were posed by Committee members on this bill.

**Closing by Sponsor:**

*{Tape: 3; Side: B; Approx. Time Counter: 11.4 - 12.6}*

**SEN. ELLINGSON** expressed his appreciation to the Committee. He indicated it is his intent to have consensus between the various parties.

**HEARING ON SB 391**

**Sponsor:** SENATOR JEFF MANGAN

**Proponents:** Steve Yeakel, Montana Child Care Resource & Referral Network

**Opponents:** NONE

**Informational Witnesses:** Roy Kemp, Licensing Bureau Chief, Quality Assurance Division, Department of Public Health and Human Services

(DPHHS)

Becky Fleming-Sieventhaler, Program  
Manager, Department of Public Health and  
Human Services (DPHHS)

Opening Statement by Sponsor:

*{Tape: 3; Side: B; Approx. Time Counter: 13.9 - 17.7}*

SEN. JEFF MANGAN, SD 23, Great Falls & Black Eagle, brought forward a bill requiring licensure as a day-care center for certain facilities that provide day care on an irregular or sporadic basis to any number of children. He stated last session he introduced a bill which allowed for voluntary compliance in order to facilitate a continuing dialogue. Unfortunately, the anticipated cooperation has not occurred, therefore, he believes mandatory compliance is necessary. He explained drop-in child care is provided by approximately thirty entities across the state, and is a necessary service. He is not comfortable with the fact these entities are not regulated as are other agencies providing child care.

SEN. MANGAN also provided the Committee with a set of amendments **EXHIBIT (bus42a11)**.

Proponents' Testimony:

*{Tape: 3; Side: B; Approx. Time Counter: 18 - 18.5}*

Steve Yeakel, Montana Child Care Resource & Referral Network, conveyed his organization's support for the bill, and appreciation to SEN. MANGAN.

Informational Witness Testimony:

*{Tape: 3; Side: B; Approx. Time Counter: 18.7 - 19}*

Roy Kemp, Licensing Bureau Chief, Quality Assurance Division, Department of Public Health and Human Services, stated he was present to answer any questions the Committee may have.

Questions from Committee Members and Responses:

*{Tape: 3; Side: B; Approx. Time Counter: 19.2 - 28.8}*

*{Tape: 4; Side: A; Approx. Time Counter: 0.2 - 1.8}*

SEN. SPRAGUE inquired whether there are any unintended

consequences arising from the bill. **Mr. Kemp** replied in the negative.

**SEN. RYAN** asked **Mr. Kemp** about child/staff ratios. **Mr. Kemp** explained under his department's rule making authority they attempted to address the issue by seeking input, however there was no interest. To date, the rule has not been written. **SEN. RYAN** asked for an approximate date for completion. **Mr. Kemp** stated the issue is very important to the department, and it is still being pursued.

**CHAIRMAN MAHLUM** asked **SEN. MANGAN** to explain the amendments he submitted. **SEN. MANGAN** explained the amendments are fairly technical in nature, but important to the bill.

**SEN. SPRAGUE** asked **SEN. MANGAN** to explain amendment number seven. **SEN. MANGAN** deferred to **Mr. Kemp**. **Mr. Kemp** deferred to **Ms. Fleming-Sieventhaler**. **Ms. Fleming-Sieventhaler** stated the language is based upon national standards. A brief discussion followed regarding interpretation of the amendment.

**CHAIRMAN MAHLUM** asked **Ms. Fleming-Sieventhaler** to address amendment number three. **Ms. Fleming-Sieventhaler** said there should not be a colon in the statement.

**Closing by Sponsor:**

***{Tape: 4; Side: A; Approx. Time Counter: 1.9 - 3.9}***

**SEN. MANGAN** stated, in response to **SEN. RYAN's** concerns about staffing ratios, this is another reason for this bill. He emphasized the importance of protecting children.

**HEARING ON SB 450**

**Sponsor:** **SENATOR VICKI COCCHIARELLA**

**Proponents:** **Oliver Goe, Attorney, Montana Municipal Insurance Authority**  
**Aidan Myhre, Montana Chamber of Commerce**  
**Jerry Driscoll, AFL/CIO**  
**Nancy Butler, Montana State Fund**  
**Larry Jones, Liberty Northwest**  
**Riley Johnson, National Federation of Independent Businesses**  
**Barry "Spook" Stang, Executive Vice President, Montana Motor Carriers**

Jacqueline Lenmark, American Insurance  
Association  
George Wood, Executive Secretary, Montana  
Self-Insurers Association  
Keith Olson, Montana Logging Association  
Cory Swanson, Coventry First

Opponents: Al Smith, Montana Trial Lawyers Association  
Larry Anderson, Attorney, Great Falls  
Lee A. Miller, self, *in absentia*  
Allan McGarvey, Attorney  
Lon Dale, Attorney  
Dean Blackman, Attorney  
Don Judge, Teamsters Local 190  
Gene Fenderson, Montana Progressive Labor  
Caucus

Informational Witnesses: Kevin Braun and Jerry Keck, Department  
of Labor and Industry

Opening Statement by Sponsor:

*{Tape: 4; Side: A; Approx. Time Counter: 4.5 - 13.9}*

SEN. VICKI COCCHIARELLA, SD 36, Missoula, brought forward a bill which revises laws related to workers' compensation. She explained the reason for the bill, and that it represents a compromise. SEN. COCCHIARELLA outlined each of the four aspects of the bill, noting how each strengthens the workers' compensation law.

SEN. COCCHIARELLA submitted amendments to the Committee **EXHIBIT (bus42a12)** (SB045001.aem), and an example of how a claim might be computed **EXHIBIT (bus42a13)**.

Proponents' Testimony:

*{Tape: 4; Side: A; Approx. Time Counter: 14.2 - 25.7}*

Oliver Goe, Attorney, Montana Municipal Insurance Authority, conveyed support for the bill. He outlined the various sections of the bill, and noted the purpose for each.

Aidan Myhre, Montana Chamber of Commerce, stated her organization represents over 700 businesses in Montana who are very interested in workers' compensation issues. Collectively, the members believe this bill improves workers' compensation law and is therefore supported by them.

**Jerry Driscoll, AFL/CIO**, conveyed his organization's support for the bill. He expressed concern over an attorney receiving thirty-five percent (35%) of a claim, and noted the reason for the other sections.

**Nancy Butler, Montana State Fund**, expressed the support of her organization for the bill.

**Larry Jones, Liberty Northwest**, stated his organization joins in the comments of previous proponents.

**Riley Johnson, National Federation of Independent Businesses**, expressed support for the bill.

**Barry "Spook" Stang, Executive Vice President, Montana Motor Carriers**, conveyed his organization's support for SB 450.

**Jacqueline Lenmark, American Insurance Association**, expressed her appreciation and support for the bill.

**George Wood, Executive Secretary, Montana Self-Insurers Association**, expressed his organization's strong support for the bill.

**Keith Olson, Montana Logging Association**, in support.

**Cory Swanson, Coventry First**, in support.

**Opponents' Testimony:**

*{Tape: 4; Side: A; Approx. Time Counter: 25.8 - 28.8}*

*{Tape: 4; Side: B; Approx. Time Counter: 4 - 17.6}*

**Al Smith, Montana Trial Lawyers Association**, addressed each section of the bill, noting the strength and weakness of each.

**Larry Anderson, Attorney, Great Falls**, expressed opposition to the bill. **Mr. Anderson** explained the common fund approach. He also submitted testimony on behalf of **Lee A. Miller EXHIBIT (bus42a14)**.

**Lee A. Miller, self, in absentia**, submitted written testimony.

**Allan McGarvey, Attorney**, stated he represented the plaintiff in the first workers' compensation common fund case. He spoke to the reasons for the common fund doctrine.

**Lon Dale, Attorney, Missoula**, stated his office represented Kevin



Rousch with three other firms. He explained the costs associated with representation are prohibitive, and they would prefer that aspect of the bill be eliminated.

**Dean Blackman, Attorney**, stated whatever is gained in efficiency by allowing workers' compensation representatives to speak with doctors, will be lost in fundamental fairness and the trust of workers. He also addressed the impairment rating for pain.

**Don Judge, Teamsters Local 190**, stated his organization joins in the concerns of **Mr. Blackman**.

**Gene Fenderson, Montana Progressive Labor Caucus**, expressed his organization's opposition to the bill with the exception of benefit increases.

**Informational Witness Testimony:**

*{Tape: 4; Side: B; Approx. Time Counter: 17.8 - 18.}*

**Kevin Braun, Department of Labor and Industry**, stated he and **Jerry Keck** were present to answer any questions Committee members may have.

**Jerry Keck, Department of Labor and Industry**.

**Questions from Committee Members and Responses:**

*{Tape: 4; Side: B; Approx. Time Counter: 18.1 - 18.7}*

**SEN. SPRAGUE**, referring to proponent testimony suggesting employers will be made vulnerable to lawsuits, asked **Mr. Braun** to address that concern. **Mr. Braun** stated he thought **Mr. Smith's** assertion arose from the possibility of the exclusive remedy not attaching. **Mr. Braun** stated, in this situation, he does not know how realistic that prospect is.

**Closing by Sponsor:**

*{Tape: 4; Side: B; Approx. Time Counter: 18.8 - 20.2}*

**SEN. COCCHIARELLA** outlined various aspects of other bills presently before the body which address coordinating issues.

**EXECUTIVE ACTION ON SB 450**

*{Tape: 4; Side: B; Approx. Time Counter: 21 - 23.8}*

Motion: SEN. SPRAGUE moved that SB 450 DO PASS.

Discussion:

Motion: SEN. SPRAGUE moved SB 045001.AEM .

Ms. McClure explained the amendments offered by SEN. COCCHIARELLA.

Motion/Vote: SEN. SPRAGUE moved that SB 045001.AEM DO PASS.

Motion carried 9-0.

Motion/Vote: SEN. SPRAGUE moved that SB 450 DO PASS AS AMENDED.

Motion carried 8-1 with RYAN voting no.

EXECUTIVE ACTION ON SB 391

*{Tape: 4; Side: B; Approx. Time Counter: 24.5 - 27.4}*

Motion: SEN. SPRAGUE moved that SB 391 DO PASS.

Discussion:

Motion/Vote: SEN. SPRAGUE moved that SB 039101.ace, **EXHIBIT** (bus42a15) DO PASS. Motion carried 7-0.

SEN. RYAN explained one problem day cares have is staffing. He is concerned the bill may put some people out of business.

Motion/Vote: SEN. SPRAGUE moved that SB 391 DO PASS AS AMENDED.

Motion carried 6-1 with MAHLUM voting no.

HEARING ON SB 458

Sponsor: SENATOR WALTER McNUTT

Proponents: Carl Maehl, citizen, *in absentia*  
Irv Sternberg, citizen, *in absentia*  
Stan Kaleczyc, Attorney, Northwestern  
Corporation  
John Fitzpatrick, Northwestern Corporation  
Bob Nelson, Montana Consumer Council

**Jerry Driscoll, AFL/CIO**  
**Webb Brown, Montana Chamber of Commerce**

**Opponents:**           **Roger Sullivan, Attorney, Kalispell**  
                             **Joe Micheletti, on behalf of himself**  
                             **George Ochenski, Clark Fork Coalition**  
                             **Al Smith, Montana Trial Lawyers Association**  
                             **Wayne Dahood, Attorney, Anaconda**  
                             **Allan McGarvey, Attorney**

**Informational Witnesses:** **Tom Schneider, Commissioner, Public**  
   **Service Commissioner**

**Opening Statement by Sponsor:**

**{Tape: 5; Side: A; Approx. Time Counter: 0.2 - 1.1}**

**SEN. WALTER McNUTT, SD 50, Sidney,** brought forward a bill providing protection for ratepayers and for the shareholders of innocent third-party purchasers for the errors or omissions of a predecessor utility. He stated, rather than go into a lengthy introduction, he would allow proponents to speak.

**SEN. McNUTT** provided the Committee with proposed amendments **EXHIBIT (bus42a16)** (SB045801.aem), and with letters in support from **Carl Maehl** and **Irv Sternberg EXHIBIT (bus42a17)**.

**Proponents' Testimony:**

**{Tape: 5; Side: A; Approx. Time Counter: 1.3 - 17.}**

**Carl Maehl, citizen, in absentia,** submitted written testimony.

**Irv Sternberg, citizen, in absentia,** submitted written testimony.

**Stan Kaleczyc, Attorney, Northwestern Corporation,** explained the intent of **SB 458**. He shared how mergers were taught in law school. **Mr. Kaleczyc** used the example of a corporation that has been in business for a long time, and has a principal line of business. Over a period of time, it creates subsidiaries doing other lines of business. Somewhere along the line, the management shareholders of the corporation say they want to sell that old line business and just develop the new subsidiary business. The problem is you just cannot merge that main corporation into the new one because the subsidiary is going to trail along with it. One way to resolve the problem is to create a series of transactions in which new subsidiary corporations are created that become holding corporations. Merge the old

corporation into one of the subsidiaries. Reorganize all of these subsidiaries so that what once was a subsidiary is now a parent. The new parent corporation takes the shareholders of the old corporation, exchanges their shares for the new corporation, and then the old line of business that was once the principal business becomes the business of the subsidiary and you sell off the subsidiary. The question this bill addresses is, when you have this kind of complicated, multi-step reorganization, who will be responsible if that reorganization is not done correctly? The choices are quite simple, either: 1) is it the surviving corporation the old shareholders now own with the subsidiary business which is now their principal business; or, 2) the third-party purchaser of that old line of business that got spun off by the new corporation. The answer this bill proposes, by two amendments to existing corporate law, is the legislature will make a determination when you have this kind of complicated, reverse-triangular, spin-off merger. The surviving corporation with the liabilities will be the corporation the shareholders went to, the officers and directors went to, and that profits from the sale of the old-line business went to. By doing so, an innocent, third-party purchaser will not be tagged with those liabilities unless that particular purchaser assumes those liabilities associated with that reorganization and merger. This is what sections two and three of the bill accomplish.

**Mr. Kaleczyc** explained section one of the bill puts it in the context of Public Service Commission proceedings and basically says two things. One: under no circumstances will the ratepayers ever pay for a merger or reorganization that went awry; and, 2) when this happens in the context of a regulated utility, the new owner of the regulated utility will not be liable for a merger or a reorganization unless those liabilities are assumed by the new owner consistent with the rest of the bill.

**John Fitzpatrick, Northwestern Corporation**, distributed a handout which, he said, described what took place within the Montana Power Company divestiture and some of the issues that have arisen in terms of a shareholder lawsuit filed in 2001

**EXHIBIT (bus42a18)**. He pointed out that the first two or three pages of the handout are representational in nature; a number of details are not reflected in the document. One page one the first thing you see is Montana Power Company, and underneath it four businesses that were sold off between 1991 and February 2001. Each of those businesses were sold without shareholder approval. They were sold to various companies shown on the right. The sale proceeds which are tracked on the green line, went back around to the Montana Power Company; and, ultimately, most of that money flowed down to the other subsidiary, Touch America. He pointed out in the fall of 2001, there was a

shareholder vote on the merger of Touch America with the parent company, and also a vote to sell the gas and electric transmission and distribution assets to Northwestern Corporation. That particular merger took place in February of 2002, creating a new company called Touch America Holdings. Two days later, Touch America Holdings sold the gas and electric transmission and distribution assets to Northwestern. Northwestern paid \$602 million in cash and \$488 million in debt assumption, with the money flowing back to Touch America.

He stated the next page is another representation that show basically where the money went. The money came in and the initial four sales went to the Montana Power Company. Most of the money went to Touch America; however, some went back to the ratepayers, and some of it went to state and federal taxes. **Mr. Fitzpatrick** stated, unfortunately, he could provide the exact amounts because that particular information resides with Touch America, who took to corporate records. On the right hand side, the same page also shows the number of expenditures Touch America made. He emphasized, the numbers are not accounting accurate, they came out of press releases. He also stated he knew some of the figures were in error. For example, the \$500 Million spent on the ATT Fibre Project and the fiber built with Sierra Touch were well over budget and these numbers do not show the exact amount spent. The chart also shows how, after Touch America and Montana Power merged to form Touch America Holding, transmission and distribution assets were then acquired by Northwestern.

The next page shows the transition of the companies in Touch America Holdings and what happened in terms of the movement of the officers and personnel associated with the plan to divest Montana Power of its' various assets. When Touch America Holdings was created, the officers of Montana Power went over to Touch America with the exception of Jack Happy (sp?) who stayed for a few months with Northwestern. The Board of Directors went to Touch America, the corporate records went to Touch America, and the shareholders had their stock converted from Montana Power stock to Touch America stock and they went to Touch America.

One of the major claims made in the McGreevey, et al, lawsuit was the defendant, Montana Power, was required, pursuant to statutory mandate, directives of common laws, and the requirements of Section 1 of the by-laws, to seek shareholder approval for the sale of its' assets. He pointed out that Northwestern did, in fact, have shareholder approval. Shareholder approval was the event that triggered the final closing of that sale. He said it is Northwestern's belief that liability should follow those whose actions created injury and not innocent third parties. In this case, what he was talking about was who made decisions. **Mr.**

**Fitzpatrick** believes if you look at the plaintiffs' lawsuit, what they are talking about is a scheme by the directors and officers of the Montana Power Company which includes: a plan to evade shareholder approval, and a conspiracy between purchasers of assets such as PPL Montana and the Montana Power Company to undertake this divestiture. He stated these decisions were made by the former officers of the Montana Power Company.

Northwestern did not acquire the officers, the shareholders, the corporate records. Northwestern did not acquire that company.

Northwestern acquired pipelines, power lines, and sub-stations; and, those sub-stations, power lines, and pipelines did not make those decisions. What has happened in the lawsuit is that Northwestern is now being identified as the corporate successor to Montana Power and is expected to step up to the plate to pay damages to the plaintiffs if they are successful.

**Mr. Fitzpatrick** noted the only party who will be relieved from liability under this bill is Northwestern, because they were the only corporate successor to have acquired Montana Power assets with shareholder approval. He, too, noted this bill does not affect Northwestern's liability to Milltown, Montana.

**Bob Nelson, Montana Consumer Council**, stated his agency is responsible for protecting consumer interests in utility rate proceedings. **Mr. Nelson** conveyed the support of his agency for the bill.

**Jerry Driscoll, AFL/CIO**, stated the best part of this bill is the ratepayer protection mechanism, and it will not be necessary to spend inordinate amounts of money on defense attorneys.

**Webb Brown, Montana Chamber of Commerce**, stated the basic point of this bill is that liabilities should follow responsible parties. He urged the Committee's support of the bill.

#### Opponents' Testimony:

*{Tape: 5; Side: A; Approx. Time Counter: 17.2 - 29}*

*{Tape: 5; Side: B; Approx. Time Counter: 4.1 - 5.5}*

**Roger Sullivan, Attorney, Kalispell**, stated his law firm is one of the firms representing the tens of thousands of shareholders of the Montana Power Company in the litigation that was referenced. He stated this bill just became available to his office and the public the preceding evening, and he drove the entire night to attend this meeting. **Mr. Sullivan** provided the Committee with a copy of the "Order Joining Northwestern Energy, L.L.C. As Party Defendant And Restricting Further Transfer Of Interest Without Court Approval" issued by Second Judicial

District Court on 23 October 2002 **EXHIBIT (bus42a19)**. He referred to the exhibit, noting this bill presents a fundamental change to the Montana laws of corporate governance. In reference to **Mr. Kaleczyc's** testimony regarding the change of corporate law, he stated the law of Montana is the law of all fifty states. He explained **Mr. Kaleczyc's** proposal would change two statutes which embody a fundamental expression of public policy: it is a rule of responsibility and a rule of basic fairness. This is why all fifty states have the rule, and why the rule is a part of the Uniform Act of Corporate Governance. He outlined the events proceeding Northwestern's acquisition, noting Northwestern proposed articles of merger relied upon the same statute they would now like to change. Similarly, in their filings with the Securities and Exchange Commission. **Mr. Sullivan** also stated **Mr. Kaleczyc's** firm has relied upon this merger law in prosecuting litigation to the benefit of Northwestern. Now, in contradistinction to standard corporate law, Northwestern wants liabilities to follow the shareholders not the company. The lawsuit filed by the shareholders is against the successor company. He stated it is Northwestern's desire to act to the detriment of the ratepayers and the detriment of the shareholders of the Montana Power Company by creating a unique aberration of corporate law. **Mr. Sullivan** stated the Committee would make a very serious mistake should they buy into this proposal. Further, Northwestern's assertion regarding ratepayers being held responsible has no foundation because ratepayers cannot be held responsible unless the Public Service Commission approves the costs being passed-on. He does not believe it is possible to pass-on the costs of corporate wrong doing. He reiterated the highlights of his testimony, and stated this bill is an ill-advised bailout.

**Joe Micheletti, on behalf of himself**, stated he bought property in January of 2000. In the process of changing utilities, the company indicated they had no record of the property. During the course of the transition from Montana Power Company to Northwestern, his home sustained thousands of dollars of damage because the company turned off the electricity and natural gas while he was away receiving medical care. He does not believe this is appropriate legislation.

**George Ochenski, Clark Fork Coalition**, reiterated concerns regarding the Milltown Dam. Although he has assurances regarding Northwestern's liability, he would like a letter to be sent to the Committee as well.

**Al Smith, Montana Trial Lawyers Association**, stated the bill is in violation of Article Thirteen, Section Two, of the Montana State Constitution. **Mr. Smith** read the relevant section and

thanked the Committee.

**Wayne Dahood, Attorney, Anaconda,** stated his firm represents some of the plaintiffs in the McGreevey, et al, lawsuit. He stated this bill grants immunity to Milbank, Tweed, Hadley & McCloy--one of greatest law firms in the world--for their advise to Goldman Sachs and Montana Power that assets could be sold without shareholder approval. It also provides immunity for corporations that acquired the utility businesses. **Mr. Dahood** stated this case is presently before the courts of this state, and to seek legislation which will address a particular controversy is constitutionally impermissible. He also stated the constitution does not allow the passage of laws *ex post facto*, noting although this generally applied to criminal penalties, it has also been applied to issues such as the one here today. He urged the Committee not support the bill.

**Allan McGarvey, Attorney,** stated Northwestern has presented itself as an innocent purchaser in the acquisition of Montana Power assets; and, agreed Northwestern, as parent corporation, was a purchaser. However, this bill has nothing to do with Northwestern as a parent corporation, it has to do with Northwestern Energy, LLC. It has to do with the successor in interest to Montana Power Company, LLC: Northwestern Energy, LLC. **Mr. McGarvey** stated this bill is a bailout of Montana Power Company, LLC, and has nothing to do with an innocent purchaser.

**Informational Witness Testimony:**

**{Tape: 5; Side: B; Approx. Time Counter: 5.6 - 6.}**

**Tom Schneider, Commissioner, Public Service Commission,** stated the agency is in an informational position, and their intention is to monitor a very complex bill.

**Questions from Committee Members and Responses:**

**{Tape: 5; Side: B; Approx. Time Counter: 6.2 - 18.4}**

**SENATOR GLENN ROUSH** stated, as a former employee of the Montana Power Company, he must declare a conflict of interest with the bill. Although he will vote on the bill, he did want the Committee to know about the potential conflict of interest.

**SENATOR SHERM ANDERSON** asked **Mr. Kaleczyc** to respond to concerns raised regarding *ex post facto* laws. **Mr. Kaleczyc** stated he did not believe the concept applies. He stated **Mr. Petesch** was approach with the question and did not have any concerns.



**SEN. ROUSH**, alluding to testimony that ratepayers could not be held responsible without the approval of the Commission, asked **Mr. Schneider** to respond to the comment. **Mr. Schneider** replied costs may not be passed-on to ratepayers whether or not the legislation passes.

**SEN. COCCHIARELLA** asked **Mr. Kaleczyc** to speak to the constitutional issues raised, and to the reason for changing a law which is in effect across the nation. **Mr. Kaleczyc** replied the Model Business Corporations Act was adopted by Montana, and deals directly with simple merger. This, however, was not a simple merger. He stated this legislation allows the legislature to provide instruction regarding a very complex, reverse-triangular merger. **SEN. COCCHIARELLA** inquired about unintended consequences. **Mr. Kaleczyc** replied he did not believe there were any because the bill is not that complicated.

**Closing by Sponsor:**

***{Tape: 5; Side: B; Approx. Time Counter: 18.7 - 21.9}***

**SEN. McNUTT** stated Northwestern did not buy any Montana Power stock, they purchased poles and wires. In fact, Touch America was named the successor company, not Northwestern. While there may have been an anomaly created by Montana Power and how it chose to do things, but that had nothing to do with Northwestern. What we have is a third-party who was the successful bidder for poles and wires who has now been enjoined in a lawsuit. He gave his impression of the potential outcomes from the present lawsuit if successful.

**EXECUTIVE ACTION ON SB 430**

***{Tape: 5; Side: B; Approx. Time Counter: 22.8 - 24.5}***

**Motion/Vote:** **SEN. COCCHIARELLA** moved that SB 430 DO PASS AS AMENDED, **EXHIBIT**(bus42a20) (SB043001.agp) . Motion carried 7-0.

**EXECUTIVE ACTION ON SB 458**

***{Tape: 5; Side: B; Approx. Time Counter: 24.6 - 29}***

***{Tape: 6; Side: A; Approx. Time Counter: 0.2 - 10}***

A letter from **Dennis Lopach, Senior Vice President of Administrative Services at Northwestern Energy** was distributed to the committee when the meeting was called to order at 3 p.m. in

Room 350, **EXHIBIT**(bus42a21).

**Motion/Vote:** SEN. GEBHARDT moved that SB 458 DO PASS AS AMENDED,  
(SB045801.aem). Motion carried 10-1 with HANSEN voting no.

**ADJOURNMENT**

Adjournment: 12:47 P.M.

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SEN. DALE MAHLUM, Chairman

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SHERRIE HANDEL, Secretary

DM/SH

**EXHIBIT (bus42aad)**